

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

ROBERT HARVEY AND ELOIS HARVEY, §
§
§
Plaintiffs, §
§
§
v. § **Civil Action No. 5:19-cv-1209**
§
U.S. BANK NATIONAL ASSOCIATION §
AS TRUSTEE FOR THE HOLDERS OF §
THE CITIGROUP MORTGAGE LOAN §
TRUST INC. ASSET-BACKED PASS- §
THROUGH CERTIFICATES SERIES §
2005-HE3 and SHELLPOINT §
MORTGAGE SERVICING, §
§
Defendants. §

NOTICE OF REMOVAL

Defendants U.S. Bank National Association as Trustee for the Holders of the Citigroup Mortgage Loan Trust Inc. Asset-Backed Pass-Through Certificates Series 2005-HE3 (“U.S. Bank”) and NewRez LLC, F/K/A New Penn Financial, LLC, D/B/A Shellpoint Mortgage Servicing (“Shellpoint” and collectively with U.S. Bank, “Defendants”), hereby file this Notice of Removal pursuant to 28 U.S.C. Sections 1332, 1441, and 1446. In support of this Notice, Defendants state as follows:

INTRODUCTION

1. On or about September 27, 2019, Plaintiffs Robert Harvey and Elois Harvey (“Plaintiffs”) filed their *Original Petition and Application for Temporary Restraining Order and Temporary Injunction* (the “Petition”) bearing Cause No. 2019CI20433 in the 166th Judicial District Court of Bexar County, Texas, styled *Robert Harvey and Elois Harvey v. U.S. Bank National Association as Trustee for the Holders of the Citigroup Mortgage Loan Trust Inc.*

Asset-Backed Pass-Through Certificates Series 2005-HE3 (“U.S. Bank”) and Shellpoint Mortgage Servicing (the “State Court Action”). A true and correct copy of the Docket Sheet from the State Court Action is attached hereto as Exhibit A. In accordance with 28 U.S.C. Section 1446(a), copies of all process, pleadings, and orders served in the State Court Action, including will be filed as soon as the same are provided by the state court.

2. The allegations in the Petition relate to a deed of trust and foreclosure proceedings on the real property and improvements located at 8758 Shallow Ridge Drive, San Antonio, Texas 78239, more particularly described as:

LOT 3, BLOCK 6, CAMELOT SUBDIVISION, UNIT 82,
ACCORDING TO MAP OR PLAT THEREOF RECORDED IN
VOLUME 9504, PAGES 178-179, OF THE DEED AND PLAT
RECORDS OF BEXAR COUNTY, TEXAS.

(the “Property”). (*See* Petition at ¶10). Plaintiffs bring a single cause of action for declaratory judgment and also include a request for injunctive relief. (*See* Petition at ¶¶13-21).

3. This Notice of Removal is timely because thirty (30) days have not expired since Shellpoint appeared herein, making removal proper in accordance with 28 U.S.C. Section 1446(b).

4. This action is removable to federal court pursuant to 28 U.S.C. Section 1441 because it could have been filed originally in this Court pursuant diversity jurisdiction conferred by 28 U.S.C. Section 1332.

BASIS FOR REMOVAL – DIVERSITY JURISDICTION

A. There is complete diversity.

5. There is diversity jurisdiction in this Court because there is complete diversity of citizenship between Plaintiffs and Defendant, and more than \$75,000.00 is in controversy, exclusive of interest and costs. *See* 28 U.S.C. § 1332.

6. Plaintiffs are individuals and citizens of the state of Texas (See Petition and Exhibits.)

7. U.S. Bank is the trustee of a trust. When determining the citizenship of a trust for purposes of diversity jurisdiction, it is the citizenship of the trustee which controls. *Navarro Sav. Assoc. v. Lee*, 446 U.S. 458, 464-66 (1980); *Mfrs. and Traders Trust Co. v. HSBC Bank USA, N.A.*, 564 F. Supp. 2d 261, 263 (S.D.N.Y. 2008). U.S. Bank is, and at all times relevant to this action was, a national association bank with its main office located in Cincinnati, Ohio. A national bank is a citizen of the state where its main office, as designated in its articles of association, is located. *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 307 (2006). Thus, U.S. Bank is a citizen of Ohio, and no other state, for purposes of diversity jurisdiction.

8. NewRez LLC, F/K/A New Penn Financial, LLC, D/B/A Shellpoint Mortgage Servicing is a limited liability company and its citizenship is determined by its members. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). The sole member of NewRez LLC d/b/a Shellpoint is Shellpoint Partners LLC. The members of Shellpoint Partners LLC are NRM Acquisition, LLC and NRM Acquisition II, LLC. The sole member of both NRM Acquisition, LLC and NRM Acquisition II, LLC is New Residential Mortgage, LLC. New Residential Mortgage, LLC's sole member is New Residential Investment Corp., a Delaware Corporation with its principal place of business in New York. Therefore, Shellpoint is a citizen of Delaware and New York for diversity purposes.

9. Because Plaintiff and Defendants do not share a state citizenship, there is diversity of citizenship.

B. The amount in controversy exceeds \$75,000.00.

10. When declaratory or injunctive relief is sought, the amount in controversy is measured by the value of the object of the litigation, and the value of that right is measured by

the losses that will follow. *Webb v. Investacorp, Inc.* 89 F.3d 252, 256 (5th Cir. 1996). Stated differently, “the amount in controversy, in an action for declaratory and injunctive relief, is the value of the right to be protected or the extent of the injury to be prevented.” *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983); *see also Lamarr v. Chase Home Finance, LLC*, 2008 WL 4057301 (N.D. Miss. 2008) (finding amount in controversy requirement was satisfied where plaintiff sought to set aside foreclosure sale and home appraised for \$83,000.00, plus unspecified amount of monetary damages); *Bank of America National Trust and Sav. Assoc. v. Reeves*, 1995 WL 96617, *1 (E.D. La. 1995) (court held that the amount in controversy was met in action seeking to enjoin foreclosure on property because the suit “puts at issue the entire value of the property on which they attempt to enjoin defendants from foreclosing.”).

11. “Reasonable bases for valuing properties include ‘purchase price, market value, or outstanding principal and interest.’” *McPherson v. Bank of Am., N.A.*, No. H-16-3498, 2016 U.S. Dist. LEXIS 180115, at *6 (S.D. Tex. Dec. 30, 2016) (citations omitted).

12. Plaintiffs seek injunctive relief prohibiting Defendants from foreclosing on the Property. (*See* Petition at Prayer). Therefore, through the request for injunctive relief, they have put an amount in controversy equal to the value of the Property. The Bexar County Central Appraisal District’s most recent valuation of the Property shows a total assessed value of the Property at \$124,090.00. (*See* Exhibits B, B-1). For this reason alone, the amount in controversy exceeds \$75,000.00.

13. For the reasons stated above, there can be no dispute that Plaintiff seeks in excess of the minimum amount in controversy.

VENUE

14. Venue for removal is proper in this district and division, the United States District Court for the Western District of Texas, San Antonio Division, under 28 U.S.C. Section 1441(a) because this district and division embrace the 166th Judicial District Court of Bexar County, Texas, the forum in which the removed action was pending.

NOTICE

15. Pursuant to 28 U.S.C. Section 1446(d), a copy of this Notice is being filed with the Clerk of Court for the 166th Judicial District Court of Bexar County, Texas.

CONCLUSION

For the reasons described above, Defendants respectfully requests that this Court take jurisdiction over this matter and proceed as if it had been originally filed herein.

Respectfully submitted,

By: /s/ Mark D. Cronenwett
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INDEX OF DOCUMENTS ATTACHED

Exhibit A Docket Sheet for Cause No. 2019CI20433 in the 166th Judicial District Court of Bexar County, Texas;

Exhibit B Declaration of Mark D. Cronenwett;

B-1 Data Sheet from the Bexar, Texas Central Appraisal District web-site on October 2, 2019.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on October 9, 2019 as stated below on the following party:

Via ECF:

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